

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Magistrate Judge Kathleen M. Tafoya**

**Civil Action No.** 09-cv-02889-WYD-KMT FTR - Courtroom C-201

**Date:** October 14, 2010 Deputy Clerk, Nick Richards

ANDREW L. MCCARGO, Donna E. Dell'Olio  
Plaintiff,

v.

TEXAS ROADHOUSE, INC., a Delaware Courtney B. Kramer  
corporation, Sonja S. McKenzie  
Defendant.

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**COURTROOM MINUTES / MINUTE ORDER**

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**MOTION HEARING**

**Court in session: 9:22 a.m.**

Court calls case. Appearances of counsel.

Motion Hearing is set regarding Plaintiff's Motion to Compel and for Sanctions Pursuant to Fed.R.Civ.P. 37 for Pattern of Withholding Relevant Evidence [Doc. No. 90, filed September 23, 2010], and Defendant's Motion to Compel Expert Witness Files [Doc. No. 99, filed September 27, 2010].

- Oral argument by Plaintiff
- Oral argument by Defendant
- Rebuttal argument by Plaintiff

It is **ORDERED**: Plaintiff's Motion to Compel and for Sanctions Pursuant to Fed.R.Civ.P. 37 for Pattern of Withholding Relevant Evidence [90] is **GRANTED** in full.

The flash drive containing video from November 23, 2009 will be turned over to designated IT personnel selected by both parties while the personnel are together to examine the contents of the device. The flash drive will be examined within the next 10 days. The designated IT personnel will be selected by October 15, 2010. There is to be no tampering with or modifications made to the

device beyond the viewing of its contents. Upon conclusion of analysis by the designated IT personnel, the flash drive is to be returned to defense counsel at the end of examination to be held as evidence.

Any video of any portion of the restaurant from November 23, 2009 will be produced within 10 days. If no more footage exists, a sworn statement by the person responsible for searching must be provided.

Any days of video that have been requested where Mr. McCargo worked in the restaurant are to be produced. If no more footage exists, a sworn statement by the person responsible for searching must be provided.

Work schedules for the year 2009 must be produced. If they do not exist past a certain date, it must be verified they don't exist, why, and that a search was conducted to find the missing schedules. A sworn statement by the person responsible for searching must be provided.

Any and all notes, documents, or videos concerning investigations into race discrimination related to the store in question are to be produced by defense. Notes, documents, and videos must be produced within 5 days of this hearing. If none exist, a sworn statement by the person responsible for searching must be provided. A reference to the affidavit from Dee Shaughnessy is acceptable.

All employment applications for 2009 must be produced.

W-4's must be produced for every person who was employed at the Colorado Springs restaurant during 2009. Personal information, such as Social Security numbers, may be redacted. Information such as phone numbers, email addresses, and mailing addresses cannot be redacted. Telephone numbers for employees should be produced along with W-4's.

Supplement response to Interrogatory #5 must be filed by November 1, 2010 to the extent defense counsel feels is necessary.

It is **ORDERED**: The Court awards reasonable attorney fees and costs of bringing Motion to Compel forward to the plaintiff. Plaintiff's counsel will submit an affidavit of the costs associated, including attorney fees,

by November 1, 2010. Defense counsel will file a response regarding reasonableness, if any, by November 8, 2010. Plaintiff will file a reply, if any, by November 15, 2010.

It is **ORDERED**: The Final Pretrial Conference date of January 4, 2010 is incorrect and will be corrected to reflect the proper date of January 4, 2011.

It is **ORDERED**: Defendant's Motion to Compel Expert Witness Files [99] is **GRANTED** in part. The Court will allow a continued deposition of Dr. John Bermudez, which should be taken if possible by November 1. Plaintiff will bear the cost of appearance fees of the court reporter, but not the hours billed for the additional time. Defense will bear the costs of their travel to Colorado Springs to continue the deposition of Dr. Bermudez and any additional hourly time for the expert to complete the deposition.

**Court in Recess: 11:34 a.m.**

Hearing concluded.

Total In-Court Time 02:12

\*To obtain a transcript of this proceeding, please contact Avery Woods Reporting at (303) 825-6119.